

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to Chapter 3-125 (Interim)
Hawaii Administrative Rules

March 17, 2011

1. Section 3-125-13, Hawaii Administrative Rules(Interim), is amended to read as follows:

"§3-125-13 Price adjustment in construction contracts.
The paragraph or similar statement expressing the intent of this paragraph, shall be included in all construction contracts for which price adjustments will be allowed:

"Price Adjustment Clause

- (1) Price adjustment methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:
 - (A) By agreement on a fixed price adjustment before commencement of the pertinent performance;
 - (B) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - (C) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - (D) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance; or
 - (E) In the absence of agreement between the parties the provisions of section 103D-501(b)(5), HRS, shall apply.
- (2) Submission of cost or pricing data. The contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data

shall be made subject to the provisions of subchapter 15, chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs (1)(A) through (1)(D) shall be issued within ten days after agreement on the method of adjustment.

- (3) Determining Adjustments in Price. In determining the adjustment in price to the government resulting from a change, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and branch office overhead) and profit combined shall not exceed the percentages set forth below:

- (A) For the contractor, for any work performed by its own forces, twenty percent (20%) of the cost;
- (B) For each subcontractor involved, for any work performed by its own forces, twenty percent (20%) of the cost;
- (C) For the contractor or any subcontractor, for work performed by their subcontractors, ten percent (10%) of the amount due the performing subcontractor.

Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

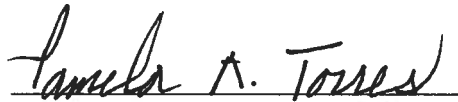
- (4) The government in determining an adjustment in price using any of the methods listed in subparagraphs (1)(A) through (1)(D) above may not mandate that the contractor submit its proposal for a price adjustment at a specified percentage that it unilaterally considers to be acceptable.
- (5) Subparagraphs (3) and (4) shall not be construed to impair the right of a contractor and government from mutually agreeing to a price adjustment under any method listed in subparagraphs (1)(A) through (1)(D) above." [Eff 12/15/95; am and comp NOV 17 1997; am 10/3/08; am 8/24/09; am **MAR 28 2011**] (Auth: HRS §§103D-202, 103D-501) (Imp: HRS §§103D-501, 103D-601, 103D-703)


2. Material, except source notes, to be repealed is bracketed. New Material is underscored.

3. Additions to updates source notes to reflect these amendments are not underscored.

4. These amendments to chapter 3-125, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor; provided further, pursuant to section 103D-202, HRS, these interim rules shall be issued by Procurement Directive and be effective for not more than eighteen months.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on March 17, 2011, and filed with the office of the Lieutenant Governor.


PAMELA A. TORRES
Chairperson
Procurement Policy Board


Bruce A. Coppa
State Comptroller

APPROVED AS TO FORM:


Deputy Attorney General